IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13837 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IP MISSION HIGH SCHOOL

Versus

DISTRICT EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 13837 of 2004

MR RS SANJANWALA for Petitioner No. 1-2

Mr. Dipen Desai, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/04/2005

ORAL JUDGEMENT

In this petition the petitioner has challenged the action of the respondent in not granting approval for appointment of teachers (Shiksan Sahayaks) vide communication dated 28.7.2004 and 24.6.2004 and letters/orders dated 13.12.2004.

2. It appears from the record that the petitioner I.P. Mission High School obtained NOC for appointment of 7 teachers (Shiksan Sahayaks) and one Peon (Saathi Sahayak). It appears from the record that after the selection/appointment, a proposal was sent to the District Education Officer for approval of the aforesaid appoinments and initially by letter dated 1.9.2003 the District Education Officer refused the approval on the ground that Commissioner of Schools had instructed not to grant approval. Thereafter, the petitioner had preferred Special Civil Application No. 15077 of 2003 which came to be withdrawn by the petitioner on 27.1.2004. It is the case of the petitioner that thereafter after conducting interviews the petitioner again applied for approval of the candidates selected to the said posts to D.E.O. on 12.2.2004. However, by order dated 24.6.2004 the DEO rejected the appointment to all the posts. Again the petitioner sent another letter to the DEO on 15.7.2004 along with other necessary information required and asked for by the DEO and the DEO vide his communication dated 28.7.2004 replied to the above letter informing the petitioner that the appointments have already been disapproved by the letter dated 24.6.2004 and therefore the petitioner preferred the present Special Civil Application.

3. During the pendency of the present Special Civil Application, the learned Single Judge of this Court {Coram: Mr. K.S. Jhaveri, J.} by his order dated 1.12.2004 directed the petitioner to approach the DEO, Ahmedabad City and to show the original record of the selection committee and the DEO was directed to pass a fresh order after perusing and considering the record. Thereafter again a fresh order was passed on 13.12.2004 whereby again selection/appointments are disapproved. All the aforesaid 3 communications are the subject matters of the present Special Civil Application.

4. Today, when the matter is called out on the Note being filed by the petitioner to the effect that they may be permitted to withdraw the present Special Civil Application as they are ready and willing to go for a fresh selection, Shri Sanjanwala, learned advocate appearing for the petitioner has made a statement that on the strength of the NOC which is already granted by the DEO for appointment of teachers (Shiksan Sahayaks) and one Peon (Saathi Sahayak), the petitioner will readvertise for appointment to the said posts and after taking interviews make a fresh selection from amongst the persons who would apply for the said post and on the selection being made the names of the appointees will be

sent to the DEO for his approval and the DEO may be directed to decide the question of grant of approval within 15 days from the date of receipt of letter from the petitioner seeking approval of such appointments.

5. Shri Dipen Desai, learned AGP, however, has submitted that he could not have any objection in permitting the petitioner to withdraw the present Special Civil Application except the one, namely appointments on the basis of the earlier NOC, and according to him the NOC would be lapsed after 2 years and therefore the petitioner is to apply for a fresh NOC. At this stage, Shri Sanjanwala, learned advocate appearing for the petitioner has submitted that the process of applying and getting NOC now would be a time consuming factor since it is the policy decision taken by the State Government not to grant NOC and this may create difficulty to the petitioner. It is submitted that though the petitioner is prosecuting the present Special Civil Application with a view to avoid any further difficulties caused to the students they are ready and willing to start fresh process of selection and therefore it will be in fitness of things to allow the petitioner to go for selection and appointments on the basis of the NOC issued earlier.

6. In the facts and circumstances of the case, more particularly in view of the fact that the petitioner School is required to fill-up the posts which have fallen vacant due to superannuation of teachers, and the students are suffering, any direction on the petitioner to obtain a fresh NOC would be against the interests of the students, particularly when the petitioner is prosecuting the present Special Civil Application challenging the action of the respondent in not granting approval of the appointments/selection of the Shiksan Sahayaks and Saathi Sahayak. It is also required to be noted that even after withdrawal of the present Special Civil Application the petitioner is required to initiate the process of fresh selection after following due procedure i.e., issuance of readvertisement, conducting of interviews in accordance with law and on merits., etc., Under the circumstances, considering the peculiar facts and circumstances of the case, it will meet the ends of justice if the petitioner is permitted to start fresh process of selection on the basis of the NOC issued earlier and to fill-up the posts in question in accordance with law and on merits and on following entire procedure afresh with a clear emphasis that this direction be not cited as a precedent in other cases. It is further directed that as and when the application for approval of the candidates selected for appointment to

the posts in question, the District Education Officer is directed to decide the same in accordance with law and on merits as early as possible.

7. With these observations and directions, the present Special Civil Application is disposed of. Direct service is permitted.

{ M.R. Shah, J. }

rmr.